

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

STATE OF TEXAS, *et al.*,

Plaintiffs,

v.

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES, *et al.*,

Defendants.

Civil Action No. 6:23-cv-00013

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants hereby respond to Plaintiffs' Notice of Supplemental Authority. ECF No. 41. As that notice informed the Court, a motions panel of the Fifth Circuit granted plaintiffs' motion for an injunction pending appeal in *Mock v. Garland*, No. 23-10319 (5th Cir. May 5, 2023). However, contrary to Plaintiffs' contentions, the Fifth Circuit's unpublished order includes no reasoning or explanation for its decision, making it "impossible for this court to discern" that court's rationale. *See Doe v. Trump*, 284 F. Supp. 3d 1182, 1185 (W.D. Wash. 2018). In addition, as Plaintiffs note, the order limits the scope of the injunction to only plaintiffs in that case. ECF No. 41 at 1. Accordingly, the Fifth Circuit's order is neither binding on this Court, nor provides the Court with any guidance in resolving Plaintiffs' pending motion for a preliminary injunction. *See Northshore Development v. Lee*, 835 F.2d 580, 583 (5th Cir. 1988) ("[A] motions panel decision is not binding precedent."). Furthermore, while a preliminary injunction is not warranted in this case, the Fifth Circuit's order underscores that any injunction should apply only to the parties before the Court.

Dated May 25, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

BRIGHAM J. BOWEN
Assistant Branch Director

/s/ Taylor Pitz
TAYLOR PITZ (CA Bar No. 332080)
JODY D. LOWENSTEIN (MT Bar No. 55816869)
MICHAEL DREZNER (VA Bar No. 83836)
FAITH E. LOWRY (TX Bar No. 24099560)
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Phone: (202) 305-5200
Email: taylor.n.pitz@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

On May 25, 2023, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Southern District of Texas, using the Court's electronic case filing system. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Taylor Pitz
TAYLOR PITZ
Trial Attorney
U.S. Department of Justice